REMARKS:

Claims 3-4, 7-8, and 11-12 are pending in the present Application, standing rejected under 35 U.S.C. § 103 as being obvious. The Applicant respectfully requests reconsideration of the Application in light of the following remarks.

I. EXPLANATION OF CLAIM AMENDMENTS

In the present Office Action, claims 3-4, 7-8, and 11-12 are rejected under 35 U.S.C. § 103 as being unpatentably obvious over U.S. Patent No. 6,249,775 ("Freeman"). In addition to adding new claims 17-19, Applicant has entered amendments to claims 3-4, 7-8, and 11-12, the reason for each to be explained below.

The preambles of claims 3-4, 7-8 and 11-12 are amended to recite "compensating financial asset service providers". This change is made not for patentability as the specification teaches that the financial asset services provider may be compensated by the creditor in an amount equal to the financial asset services value.

A. Claim 3

Claim 3 has been amended to delete the words "the steps of" from the claim. This change is made not for patentability, but to remove any implication that the phrase "comprising the steps of" indicated a specific order in which the method was to be implemented.

Claim 3 also has been amended to delete the words "related to a loan" from the preamble of the claim and add the words "related to at least one loan" to describe "a financial account." The change is not made for patentability. Because words of an element found in the preamble of a claim are not necessarily limiting elements of the claim, *see* MPEP § 2122.02, the element was moved into the body of the claim to insure that the recitation will be legally recognized.

A. Claim 4

Claim 4 has been amended to delete the words "the steps of" and "related to a loan" from the claim, as well as being amended to add the words "related to at least one loan." The reasons for the change are not made for patentability and can be found in the previous section regarding similar changes to claim 3. Additionally, "an agreement" was changed to "a financial asset service agreement" for clarity.

II. <u>The Claims Are Patentable Over the Prior Art</u>

In the present Office Action, claims 3-4, 7-8, and 11-12 are rejected under 35 U.S.C. § 103 as being unpatentably obvious over U.S. Patent No. 6,249,775 ("Freeman"). Applicant respectfully traverses these rejections and assert that the claims are in condition for allowance.

A. Freeman Simply Describes the Problem

The present invention describes a new way to compensate a financial asset services provider. In the past, the financial asset services provider was compensated solely as a function of the interest due on the loan. Freeman states "it is traditional in the banking industry to attribute to each loan a basic cost of servicing which is included in the interest fees charged to the customer." Freeman, col. 1 l. 45-50. As a result, if a loan is prepaid prematurely there is no more interest due on the loan. Thus the service provider has no opportunity to collect fees to recover its front-loaded costs in servicing the loan.. This is the precisely the problem that Freeman describes. Freeman states that "it is self-evident that the profits from…the loan servicing line of business is heavily influenced by the performance of various loan groups vis-à-vis the default rate of these loans over the life of the loans, foreclosures, collection efforts, **loan prepayment** and the like." Freeman, col. 5 l. 60-65 (emphasis added).

However, the present invention discloses and claims a novel way **to compensate** the financial asset service provider. According to the present invention, the financial asset services provider is compensated as a portion of both the interest and the principal. Thus, if a loan is prepaid, the decrease in the amount due to the financial asset services provider under the agreement is much less, thereby removing some of the volatility in the value of the agreement. Freeman does not disclose calculating the financial asset services value (the compensation due pursuant to the contract itself) as a portion of principal and interest on the loan.

Claim 3 recites "determining a financial asset services value as a percentage of the principal and interest associated with the financial account." The specification of the present patent application teaches that "[t]he financial asset services provider 30 may be **compensated** by the creditor 10 for services provided under a financial asset services agreement **in an amount equal to the financial asset services value** 130." (emphasis

added). Thus, the financial asset services value is the compensation due to the service provider pursuant to a contract or agreement. Claims 7 and 11 depend upon claim 3, therefore incorporate this recitation.

Similarly, claim 4 recites "determining a financial asset services value as a percentage of the principal and interest associated with the final account." Claims 8 and 12 depend upon claim 4, therefore incorporate this recitation.

Likewise, claim 17 recites "fees collected in servicing a financial asset related to at least one loan are based upon a percentage of both the principal and interest associated with the financial asset". Claims 18 and 19 depend upon claim 17 and therefore incorporate this element.

For at least these reasons, the present invention would not have been obvious at the time of invention over Freeman, and the Applicant submits that claims 3-4, 7-8, and 11-12 are patentable over the teachings of Freeman.

B. Facts Taken By Official Notice Not Properly Based Upon Common Knowledge

On page 2 of the outstanding Office Action, the Examiner states that he has taken official notice that "determining a financial asset services value as a percentage of the principal and interest associated with the financial account is an old and well-known master-servicing scheme." Section 2144.03(a) of the MPEP states that "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." While it is possible that master servicing schemes that involve a percentage of the principal and interest associated with the financial account may be known, such a scheme has never been used in the context of a loan agreement, or more specifically, an agreement regarding a mortgage loan or credit card account. Therefore, the Applicant respectfully traverses the Examiner's finding of official notice under MPEP § 2144.03(c) and requests the Examiner to produce authority for his statement. "'[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings' to satisfy the substantial evidence test." MPEP § 2144.03(c) (quoting *In re Zurko*, 258 F.3d 1379, 1386, 59 U.S.P.Q.2d 1693, 1697 (Fed. Cir. 2001)). Without evidence that master servicing schemes have been applied to loan

servicing agreements, or more specifically, mortgage loans or credit card accounts, then the references cited fail to teach or suggest all of the claimed limitations.

CONCLUSION:

For at least the reasons set forth above, the Applicant respectfully submits that claims 3-4, 7-8, 11-12, and 17-19 are in condition for allowance. The Applicant therefore requests that the present application be allowed and passed to issue.

Should the Examiner believe anything further is desirable in order to place the application in even better condition for allowance, the Examiner is invited (and encouraged) to contact the Applicant's undersigned representative.

Respectfully submitted,
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